Delta v. State

1997 | Cited 0 times | Court of Appeals of Texas | April 11, 1997

REVERSE and REMAND and Opinion Filed April 11, 1997

OPINION

The trial court entered a final judgement against Bail Bonds/McKinney Delta (Bail Bonds), as surety, in a bond forfeiture case. In two points of error, Bail Bonds argues that the trial court erred in entering the judgement (1) against Bail Bonds alone and (2) after the State had previously nonsuited the principal. We reverse the trial court's judgement and remand this cause for proceedings consistent with this opinion.

BACKGROUND

Bail Bonds posted a $100,000 appearance bond on behalf of Arturo Guerrero Rodriguez. Rodriguez did not appear for trial. The trial court forfeited his bond and issued a judgement nisi naming both Rodriguez, as principal/defendant, and Bail Bonds, as surety/defendant.

The trial court entered a final judgement against only Bail Bonds. Bail Bonds moved for a new trial, alleging that the judgement was defective because it did not also name the principal, Rodriguez. The State then moved to non-suit Rodriguez. The trial court granted the State's motion and dismissed Rodriguez from the lawsuit.

Next, the trial court granted Bail Bonds's motion for new trial. Again, the State moved to non-suit Rodriguez. Again, the trial court granted the State's motion and dismissed Rodriguez from the lawsuit. The State then filed a first amended judgement nisi, [1] naming Rodriguez as principal/defendant and Bail Bonds as surety/defendant. Again, the trial court entered final judgement only against Bail Bonds. Again, Bail Bonds moved for new trial, alleging that the judgement was defective because it did not also name the principal, Rodriquez. The trial court denied Bail Bonds's motion for new trial. Bail Bonds appeals this second final judgment.

THE FINAL JUDGMENT

In Bail Bonds's first point of error, it argues that the trial court erred in entering the final judgment. Specifically, Bail Bonds contends the final judgement does not recite that the judgement was against both the principal and the surety. In Bail Bonds's second point of error, it contends that the trial court also erroneously entered the final judgement because Rodriguez, an indispensable party, was

no longer a party to the action at the time the trial court entered the judgment. Bail Bonds prays that we reverse and render.

The State responds by conceding error. However, the State prays that we reverse and remand.

1. Applicable Law

Although a bail bond forfeiture proceeding relates to criminal law matters, the rules of civil procedure govern after entry of the judgment nisi. See Dees v. State, 865 S.W.2d 461, 462 (Tex. Crim. App. 1993). Texas statutes provide that:

"When a forfeiture has been declared upon a bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, if any, as defendants; and the proceedings had therein shall be governed by the same rules governing other civil suits." Tex. Code Crim. Proc. Ann. art. 22.10 (Vernon 1989).

A final judgement in a bail bond forfeiture must be entered against both the principal and the surety. See Joe's Bonding Co. v. State, 481 S.W.2d 145, 146-47 (Tex. Crim. App. 1972). "[T]he judgment shall be made final against [the principal] and his sureties, if any, for the amount in which they are respectively bound; and the same shall be collected by execution as in civil actions." Tex. Code Crim. Proc. Ann. art. 22.14 (Vernon 1989) (emphasis added). The trial court commits reversible error in entering a judgement against the surety without also entering judgement against the principal. See Joe's Bonding Co., 481 S.W.2d at 146; Murray v. State, 832 S.W.2d 444, 446 (Tex. App.--Beaumont 1992, no writ).

2. Application of Law to Facts

Like the dissent, we recognize that under identical facts, the court of criminal appeals has dismissed an appeal for want of jurisdiction because the judgement did not dispose of all parties and, thus, was not final. See Pennebaker v. State, 117 Tex. Cr. R. 16, 36 S.W.2d 156 (1931). We agree with the Murray court that logic dictates we dismiss this appeal because the judgement failed to dispose of all the parties before the trial court. See Murray, 832 S.W.2d at 446. But, since 1931, the court of criminal appeals has only once cited the Pennebaker case as authority for dismissal on lack of jurisdiction. See Joe's Bonding Co., 481 S.W.2d at 146. And, under identical facts, the Joe's Bonding Company court, after citing Pennebaker, took jurisdiction and reversed the trial court. See Joe's Bonding Co., 481 S.W.2d at 146. [2] The court of criminal appeals has discussed a final judgement in a bond forfeiture that failed to name all of the parties named in the judgment nisi in only one other case--Smith v. State, 485 S.W.2d 787, 787 (Tex. Crim. App. 1972). The Smith court reversed the trial court with no discussion of jurisdiction. Id. Consequently, we follow the court of criminal appeals' more recent decisions.

Here, the trial court twice entered judgments that purported to be final against Bail Bonds, as surety on Rodriguez's appearance bond. Neither of these final judgments named the principal, Rodriguez. Because the trial court did not also enter judgement against Rodriguez, it committed reversible error. See Tex. Code Crim. Proc. Ann. art. 22.14; Joe's Bonding Co., 481 S.W.2d at 146-47; Murray, 832 S.W.2d at 446. We sustain appellant's first point of error. Our disposition of appellant's first point of error makes it unnecessary for us to consider appellant's remaining point of error. Tex. R. App. P. 90(a).

We reverse the trial court's judgment. We remand this cause for proceedings consistent with this opinion. [3]

FRANCES MALONEY, JUSTICE

Lagarde, J. dissenting

Do Not Publish Tex. R. App. P. 90 960654F.U05

DISSENTING OPINION

Dissenting Opinion By Justice Lagarde

I respectfully dissent. I would dismiss for lack of jurisdiction. The judgement from which appeal was taken is not a final judgment disposing of all necessary parties to this action. The record reflects the following relevant facts: (1) on June 10, 1993, Arturo Guerrero Rodriguez, a criminal defendant, failed to appear in court in criminal cause number 296-80612-93, and his $100,000 bond was forfeited. See Tex. Code Crim. Proc. Ann. art. 22.01 (Vernon 1989); (2) the case was docketed under civil cause number 296-1072-93. See Tex. Code Crim. Proc. Ann. art. 22.10 (Vernon 1989); (3) on February 24, 1995, the trial judge signed a First Amended Judgement Nisi (FAJN) against the defendant/principal and Bail Bonds/McKinney Delta, the defendant/surety on the bond. See Tex. Code Crim. Proc. Ann. art. 22.02 (Vernon 1989); (4) the FAJN had been approved by the Assistant District Attorney on February 22, 1995; (5) the FAJN directed that the defendant/principal be given notice at his last known mailing address. See Tex. Code Crim. Proc. Ann. art. 22.05 (Vernon 1989); (6) defendant/surety answered, but failed to appear. Tex. Code Crim. Proc. Ann. arts. 22.11, 22.15 (Vernon 1989); (7) defendant/principal did not appear; (8) defendant/principal is a necessary party. Tex. Code Crim. Proc. Ann. art. 22.14 (Vernon 1989); (9) on January 10, 1996, the trial court entered a final judgment against the defendant/surety only, with no disposition of the defendant/principal; and (10) no severance order appears in the record.

Defendant/principal remains an undisposed party to civil cause number 296-1072-93 in the court below. The judgement from which this appeal was taken was not a final judgement disposing of all parties; consequently, it was not an appealable order and we are without jurisdiction in this case.

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I would dismiss this appeal for lack of jurisdiction. See Pennebaker v. State, 117 Tex. Crim. 16, 36 S.W.2d 156, 156 (1931).

SUE LAGARDE, JUSTICE

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1. In its brief, Bail Bonds states that a second judgement nisi issued on September 14, 1994. The State does not contest this assertion. This second judgement nisi, however, is not part of the appellate record.

2. Although the opinion in Joe's Bonding Co. refers to the missing party as both the surety and the principal, the recitations of facts identifies the party missing from the "final" judgement as the principal. Joe's Bonding Co., 481 S.W.2d at 146.

3. Rodriguez, the principal on this bond, is not a party to this appeal. Because we cannot adjudicate the rights of a party not before this Court, we must reverse this cause and remand it to the trial court. See Murray, 832 S.W.2d at 446; Smith v. State, 529 S.W.2d 549, 549 (Tex. Crim. App. 1975); Smith, 485 S.W.2d at 787.